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Transactions *of* The Chartered Surveyors' Institution

SESSION 1938-1939.

AT THE ORDINARY GENERAL MEETING

Held at the Chartered Surveyors' Institution, Monday, 5th December, 1938.

Sir CHARLES BRESSEY, C.B. (President), in the Chair.

NEW MEMBER OF COUNCIL.

It was announced that Mr. CECIL HENRY BAILEY, B.SC. (Fellow), had been appointed Member of Council for the Warwickshire, Worcestershire and Staffordshire Branch of the Institution, and that Mr. Bailey had taken his seat in the Council for the first time that afternoon.

NEW MEMBERS.

The following new members were received by the PRESIDENT prior to the meeting and signed the Register:—

Fellow :

MERCER, WALTER SIDNEY

Professional Associates :

ASH, NORMAN HENRY
BELL, ALEXANDER GRAHAM
BROXTON, FRANK
BURTON, JOHN
CARNABY, WILLIAM FLEMING
CLAY, JOHN HENRY
COOK, DOUGLAS BRACEY
DRAPER, DAVID HILLS
FOLKARD, ROBERT GEORGE
FRITH, NORMAN LAURENCE
GADD, ERNEST ARTHUR WILLIAM
GLANFIELD, EDGAR NEWMAN
GOLD, CHARLES DUDLEY
HALL, FREDERICK GEORGE ALFRED
HANDLEY, PHILIP CECIL
HONEYBALL, PERCY
HORTON, JAMES RUSSELL
KENHAM, HERBERT
LAMB, RICHARD ANTHONY
LETTS, ARTHUR LOUIS
MILDRED, RONALD HENRY
PRIOR, RONALD EDWIN
SMITH, CYRIL LEONARD
STEVENS, STANLEY RICHARD
SUTTON, JOHN FOWLER
TURNER, PHILIP HALL
VERNON, MISS CHRISTINE MARGARET
WHITE, JOHN BENTLEY
WHITTON, HUGH SUMMERS
WILLIS, ROWLAND HAYDN

AWARD TO PRESIDENT OF HONORARY DEGREE BY UNIVERSITY OF LONDON.

MR. OSWALD HEALING (the Senior Vice-President) said he had an announcement to make which he knew would be received with great pleasure by all the members present, namely, that the Senate of the University of London had recently conferred upon the President the honorary degree of Doctor of Science. He knew he was expressing the feelings of every member of the Institution when he offered their sincere congratulations to the President upon the honour which had been conferred upon him. It was particularly gratifying that the conferment of the degree had occurred during Sir Charles Bressey's period of presidency of the institution. The University was rightly conservative in bestowing the degrees which

it gave gratuitously, and limited the recipients of those honours to men of real distinction. The roll of the honorary Doctors of Science already included such names as those of Lord Lister, Lord Kelvin, Sir J. J. Thomson and Professor Einstein, and that was sufficient indication of the class of honour which had been conferred upon the President.

In presenting Sir Charles Bressey to the Chancellor of the University, the Public Orator referred to the services in recognition of which the distinction had been conferred upon him, and said: "In "Sir Charles Bressey we greet a distinguished engineer and a great public servant, to whom, as Principal Technical Officer of the Ministry of Transport, has been assigned a task of heavy responsibility and endless difficulty, the problem of dealing with the ever-increasing complexity of modern transport, which is not the least of the many dangers and discomforts that the apparently beneficent invention of the internal combustion engine has inflicted on a startled and unready world. To him we look for the co-ordination of transport and the provision of new channels to alleviate the confusion, the pressure and the noise that are with us night and day. He has laboured long and faithfully and has set the crown on many achievements by preparing, in conjunction with Sir Edwin Lutyens, that great scheme for the planning of highway development in London which is designed to open out new avenues for the gigantic flow of traffic which chokes its streets to-day. So vast is the scheme that thirty years are allotted for its complete fulfilment, but we hope that long before that period has elapsed his skill and foresight will let light into the labyrinth and have caused him to be proclaimed as one of the greatest of London's benefactors."

On behalf of all the members of the Institution, young and old, he asked the President to accept their congratulations and felicitations.

The PRESIDENT assured the members that not only was he deeply conscious of the honour that had been done to him and the distinction that had been conferred upon him by the University of London, but he was also and perhaps even more conscious of the warmth and generosity of the congratulations which had been offered to him by members of the profession to which he was proud to belong. It was, he hoped, an encouragement to members of the Institution to know that such an exceptional honour had been conferred upon a member of their profession. As President of the Institution he welcomed the honour most gratefully, and he welcomed even more the kindness and cordiality of the congratulations so pleasantly tendered by Mr. Oswald Healing.

A DISCUSSSION took place on Mr. DAVID EDWARDS' paper entitled:

THE IMPROVEMENT AND DEVELOPMENT OF A SEASIDE RESORT.

The PRESIDENT, in introducing Mr. Edwards, the Borough Engineer of Brighton, as an old friend and colleague of his own, said it was at his suggestion that Mr. Edwards had been asked to present a paper to the Institution. His reason for urging him to spare some of his valuable time for that purpose was that he wanted members of the Institution, especially the younger members, to come face to face with a man of achievement, a man who had not merely thought and planned and recommended, but had carried his recommendations into effect. A man was to be envied who could carry things into effect instead of jotting them down in the hope that thirty years later someone would pay some attention to them!

Mr. Edwards was fortunate in serving a borough where money was of no account, so long as it would attract visitors. Mr. Edwards was a past-master in the great art of attracting visitors. He had noticed, when he attended a meeting of the Sussex Branch of the Institution a day or two ago, how amazingly skilful Mr. Edwards was in seizing every little bit of land which in other places would be misused or abused or neglected, and converting it into something for which he could charge an admission fee, or from which a profit could be obtained. Yet, in spite of his Herculean efforts to spend money, the rates of Brighton were moderate, and the ratepayers of Brighton were to be sincerely congratulated upon the extraordinary initiative displayed by Mr. Edwards and the expert skill with which he had guided the expenditure of that most prosperous and enterprising borough.

Mr. E. B. GILLETT (Member of Council), in proposing a vote of thanks to the author for his very interesting paper, referred to the title of the paper, and said that some people might feel that the greatest improvement that could take place in certain seaside towns was their demolition, but there was no doubt that other people would hold diametrically opposite views, and it was therefore necessary, as the author said, to proceed by means of wise planning.

The primary desire, he thought, of most people who visited a seaside resort was to see the sea, and the type of the sea front made

a great impression on them. Nature had been kinder to some resorts than to others, but a well-developed front was undoubtedly an attraction to the average visitor. He thought the slides which the author had shown of the front at Brighton indicated that very little remained to be done there. Whether entertainment was provided for visitors on the front itself, such as swimming pools, pavilions, tennis courts, and so on, depended on the class of visitor, but he thought that a pleasant sea front tended to keep visitors in the town and make them come back again, whereas they might not do so if the sea front was not attractive.

Bearing on the attractiveness or otherwise of the sea front was the elevation of buildings adjoining it. He thought the author was to be congratulated on the fact that Brighton seemed to have specially wide powers in that connection. The control of elevations and also of advertisements, especially illuminated ones, should bring about in due course very desirable improvements under town planning.

With regard to car parking, people who came by car liked to have some place, not on the front but fairly near to it, where they could park their cars and not be hounded from place to place. He gathered that the author's solution of the problem was not car parks but public garages, but no doubt he was in process of solving the problem and was therefore to be congratulated.

The street improvement works which the author described in his paper were striking examples of what a bold and courageous policy could effect, but he thought that not many corporations would care to face a compensation of £740 per foot. The author had said that practically no rate increase resulted, but he wondered what the author meant by " practically no rate increase." In his own home area " practically no increase in the rates " was usually about a shilling.

In dealing with the Restriction of Ribbon Development Act the author said in his paper: " As I have just remarked, the British " public now accepts any burden put upon it almost without a " murmur, if the demand justifies it." Personally he thought it was one of the penalties of democracy that murmuring was no use ; what was required was a non-stop siren ! The individual ratepayer might feel that it was useless to make any more mild comment.

With regard to the question of traffic, inward and outward, on which some very illuminating figures had been given, he thought anyone who had tried to get on to or even to cross one of the south coast town roads during the summer months would support the author's plea for some kind of solution of the traffic problem. It seemed to him extraordinary that any traffic figures could be obtained at all ; his experience was that the traffic did not move ! The President could deal much better with the point than he could.

It was essentially within the President's province, and perhaps the author, being a friend of his, would persuade him to accept a fresh reference to deal with the problem. The President's solution might not be acceptable to Mr. Edwards, who appeared to want more people to travel to and from Brighton, whereas his own humble study of the Road Development Survey Report had led him to the conclusion that Sir Charles Bressey never wanted to do anything except lead traffic past given spots! He visualised the author persuading Sir Charles to leave town by car and mount to the summit of the South Downs, and taking him from the car to a good viewpoint, from which he could see the whole of the town spread out beneath him, with possibly a kindly sea mist obscuring some of the less attractive suburbs. Then he could see Sir Charles taking out his plan and making a decisive note upon it, which he thought would be something like this: "Treat as Hyde Park; "tunnel until France."

It only remained to propose, which he did with the utmost pleasure, a hearty vote of thanks to the writer for his instructive paper and for the attractive way in which it had been presented.

Mr. F. Longstreth Thompson (Chartered Surveyor), in seconding the vote of thanks, said he had been very interested in the paper and in the slides which the author had shown illustrating the improvements he was carrying out at Brighton.

He himself was one of those unfortunate people to whom the President had referred in his opening remarks, who were doomed to make plans on paper in the hope—sometimes a rather faint hope—that other people would carry them out. He had had some experience, however, in the planning of seaside towns, both in this country and elsewhere, and he wished to endorse the statement in the paper that the planning of seaside resorts presented problems which were in many ways quite distinct from those entailed in the planning of inland towns. The planning of seaside resorts certainly required special experience and technique, and he was inclined to think that one of the first steps to take towards acquiring that experience and technique was to study the stages of their development in the past. Many people were apt to think that any historical study of that kind was of academic rather than of practical value, but he felt that it was a necessary approach to the problems with which one was faced at the present day. The author, in his introductory remarks, had touched on that subject and given one or two details as to the early development of Brighton, and he would like to enlarge on the subject for a few minutes.

He thought the first thing to realise was that until just over a hundred years ago there were no such things as seaside resorts. There were simply fishing villages and ports, and no one went to the seaside for pleasure or holidays. The development of the seaside resort began in the early years of the last century, when the Prince Regent in popularising Brighton not only founded the fortunes of that town but gave his approval to, and really initiated, what was to become a national habit—that of spending holidays at the seaside. Prior to that time the fashionable resorts were inland watering places, like Bath and Cheltenham, and the formal and stately manner of their planning was followed, with adaptations, in the early development of the seaside town. Most of those present would be familiar with the extraordinarily fine early development of Brighton in the elegant Regency style, with large squares open to the sea and dignified terraces. It was a matter for congratulation, he thought, that so many of the larger and better known seaside towns were planned during that excellent period of English town planning—perhaps the best period of all.

Later on there came the wave of prosperity that followed the industrial revolution, when both wealth and population enormously increased, and large numbers of people flocked to the seaside. Then all the elegance, the spaciousness and the leisure of the earlier seaside resort disappeared, and there was a tendency to build as quickly as possible serried rows of houses to serve merely as a night's shelter for people whose sole interest was the sea or, perhaps he ought to say, the seashore. What were formerly considered to be indispensable amenities were almost completely ignored in the preoccupation of providing mere accommodation.

The situation had once more changed, and the present problems had been brought about largely by the development of cheap road transport by private car and by public motor vehicles. The seaside had become very much more popular in some ways, he thought, than it had ever been before. For instance, it was favoured by the week-ender and the day visitor, who could now, especially when the seaside resort was within, say, 70 miles of any centre of population, go there easily for the day or for a week-end. That, he thought, was altering a very great deal the problems which had to be faced, not only quantitatively but also qualitatively.

Another increasingly important factor to be considered was the resident. As the author had pointed out, many people went to live at seaside towns when they retired. He himself had been impressed by that tendency, which was rendering the residential character of the seaside town once more of very great importance. He had been very interested to see the provisions which Brighton was making for that new type of residential population.

The question of the type of entertainment which a seaside resort

should provide was of vital importance. He thought that in any seaside town there would always be two types of visitor: the visitor who came for quiet enjoyment and the visitor who wanted more positive entertainment. The authorities should provide for both types, and he suggested that the best way of doing that was to segregate them as far as possible at different ends of the town.

He thought that one of the chief problems which had to be faced, and for which there were various solutions, was the provision of parking places for visitors' cars. The author had not given many clues as to the way in which he thought that problem should be solved, but had rather vaguely alluded to the erection of garages —he assumed by private enterprise. Other towns regarded the matter as a municipal question ; at Hastings, for instance, there was a very large municipal car park under the promenade widening which had been completed four or five years ago. He had used it himself many times, and had always found it most convenient, and it had occurred to him, when the author showed a slide of the widening of the promenade at Brighton, that possibly a car park might have been made in the low level arcade there.

The question of parks was a very important one at a seaside resort. People went to seaside resorts now not merely to splash about in the sea, but also to enjoy the country round the town. As everyone present knew, very great endeavours had been made to preserve the South Downs, which were one of the outstanding beauties of the south coast. He would like to congratulate Brighton on having come to an agreement with the East Sussex County Council in its endeavours to preserve practically the whole of the Downs from being built upon. He thought they were a national asset and they were certainly a very great asset to Brighton.

As the author had said, a modern seaside resort was a place mainly for pleasure and leisure, but it was also a place of industry, particularly on the part of those who were responsible for planning and carrying out improvements in the town and making new provisions for the comfort and delectation of both visitors and residents.

He had the greatest pleasure in seconding the vote of thanks which had been moved.

Mr. J. G. Drew (Town Clerk of Brighton) said he had not anything to add to what the author had said on a subject which was so essentially his own, but he thought that in the case of a town like Brighton, with its need to be always in the van of seaside resorts and to retain the title of Queen of Watering Places, the burden upon the engineering and surveying officer who had to be

largely responsible for that must be much greater than in many other towns. His sphere of action must be very much wider. There was hardly any form of physical planning or engineering construction which did not at some stage come within his cognisance. The author had had so far to depart from the routine duties of his office as to plan what was probably the largest entertainment building in Brighton, *i.e.*, the Aquarium. That was a peculiarly difficult problem, as it had to be carried out under the provisions of an Act of Parliament which forbade any of the building to be above ground level. That was a striking example of the work carried out by the author outside his ordinary duties.

As another officer of the Brighton Corporation, he very much appreciated the way in which the author's address and slides had been received that evening.

Mr. Hugh C. Webster (Chartered Surveyor) (Official Arbitrator) said he happened to be the official who had functioned at Brighton for the last fourteen years when the parties had not been wise enough to agree on a private arbitrator.

He thought the author's statement that in Western Road the cost per foot of building frontage was £740 must make other chartered surveyors feel envious, but what the author had omitted to say was that in that figure were included very large trade interests which had to be acquired.

In dealing with the improvement of Western Road, the author said in his paper: "The surplus land has been disposed of on "comparatively short leases. In some cases individual firms have "built their own buildings thereon ; in others the buildings were "designed and constructed by the Corporation." The author was referring there to the fact that, when an improvement scheme was undertaken and a small road was turned into a wide and important thoroughfare, the local authority very wisely bought sufficient land to be able to sell sites on the widened roadway with sufficient depths and so recoup itself by betterment. That was a course of action to which no one could take exception, but he, not as Official Arbitrator but as a humble citizen, rather objected to the practice which was creeping in of a corporation not only selling the land for sites, or leasing the land for sites, but also building the premises on those sites and either selling or letting them. He did not think that was the function of a local authority ; he thought the local authority should deal with the land, and not turn itself into a property speculator.

He wished to tender his thanks to the author for a most interesting and instructive paper.

BIBL. LONDIN. UNIV.

Colonel H. C. Cole (Vice-President) said he thought the title of the paper should be "The improvement and development of the "finances of a seaside resort" rather than "The improvement "and development of a seaside resort." He thought the Institution was fortunate to have amongst its members one who was so well qualified not only technically but also on the financial side as the author. The author had spoken of Socialistic measures carried out by his Council, but if they were Socialistic, the author had shown the Institution and had also shown Brighton and the country in general that Socialism could be made to pay.

Not very much had been said about the way in which the seaside resort should cater for the retired person who was a permanent resident in the town. It appeared that he was to be provided with a house of a rateable value of under £30 a year, that he was to have a pitching and putting course and a shelter, and, he hoped, his car would be parked on that part of the beach which was never washed by the sea.

He hoped that Sir Charles Bressey would enable the counties intervening between London and Brighton to provide such roads that sometimes visitors to Brighton would be able to reach their homes in London by car in a reasonable time.

He wished to express his very great appreciation of the paper.

Mr. G. M. Jefferis (Professional Associate) said that he also thought the title of the paper should be altered slightly because the author had dealt with the improvement rather than with the development of Brighton. It was easy in town planning to find out what one's predecessors had done wrong and to correct it, but it was more difficult to foresee what would happen in the future and to plan with that in view. If the author would sometimes forget about the widening of Western Road and West Street and the improvement of the front by the addition of paddling pools for children, and so on, and would drive his car to the back of Brighton (where he could have ridden on horseback a few years ago) and see some of the hideous modern houses which had been erected, not, so far as he could see, to any cohesive design, it might perhaps be of some interest to him.

He thought the author was to be congratulated on having had removed the ugly fences which formerly surrounded the public parks in Brighton. They were now open to the road, and he thought that was a great improvement, particularly in the London Road, where one now passed Preston Park and saw the beautiful gardens. There was one place in Brighton, however, where he thought a fence could with advantage be erected, *i.e.*, near the Molscombe Housing Estate, which was an excellent estate, well designed, with attractive houses. Passing alongside the estate was

an important road to Lewes, carrying a great deal of traffic. On one side of the road were houses of the artisan type and on the other side was a children's playground. The road there was dangerous for the drivers and it was certainly dangerous for the children, and he thought that if a fence was erected there and the children were allowed to cross the road only at certain points, it would be an advantage.

The vote of thanks was accorded with acclamation.

Mr. EDWARDS briefly acknowledged the vote of thanks.

Paper No. 587.

COAL ACT, 1938 (Part I.).

UNIFICATION OF OWNERSHIP OF COAL.

By A. R. Thomlinson (Fellow).

Paper to be discussed at the Ordinary General Meeting of the Chartered Surveyors' Institution on Monday, 9th January, 1939.

Introduction.

The reader is warned that any opinions that may be expressed on matters of interpretation of the Act are not those of one "learned in the law." He should also reflect that, if "he who is his own lawyer has a fool for his "client," he who accepts legal advice from a mineral surveyor may be committing an even greater folly.

The writer does not propose to discuss the political policy or the events, over a long period of years, which culminated in the passing of the Act. As regards this aspect of the matter, the reader is referred to the Parliamentary Debates, to a very interesting paper by Mr. Rollo S. Barrett,(1) and to a not altogether impartial pamphlet written by Major Nelson Rooke.(2)

Part I.

THE GENERAL SCHEME OF UNIFICATION.

Property and powers vesting in Coal Commission.

Before passing to a detailed consideration of the Act, it may be useful to look at the scheme as a whole. The

(1) Institution *Journal*, Vol. XVII., Part 12.

(2) "The Ownership of Coal Royalties" (Fisher, Knight & Co., Ltd.).

essential feature is the vesting of all the unworked coal in Great Britain in a statutory "body corporate" consisting of five members and known as the Coal Commission. In order that the Commissioners may be free from political or sectional influences, they are not to be members of the House of Commons, officials or servants of a Trade Union or financially interested in the coal industry.

By Section 2 (1) it is decreed that—

> "It shall be the duty of the Commission to exercise their functions as owners . . . in such manner as they may think best for promoting the interests, efficiency, and better organisation of the coal-mining industry."

A study of the debates in Parliament suggests that this clause has, *inter alia,* two main objects, the first being the promotion of amalgamations, and the second the prevention of premature and unplanned development of new colliery areas. The desirability of the second object is indisputable. In the writer's opinion many new collieries have been developed (within the last twenty years) that ought not to have been sunk. Very considerable additions have been made to the potential capacity of production when the existing capacity left an ample margin for any emergency or probable increase of demand. The Commission will be able, if they think fit, to control development by declining to grant leases of new colliery areas until additional capacity is needed. Obviously the cost of production must be a relevant factor.

The first object is one on which opinions differ, and is more difficult to achieve. Nothing in the Act deprives working lessees of their leasehold interest, and probably the majority of leases have long unexpired terms. No doubt the Commission could exercise persuasive powers when leases expire, and it may be that their power under Section 25 to reduce rents will have some bearing on this question.

Section 2 (2) provides that—

> "The Commission shall not themselves engage in the business of coal mining or carry on any operations for coal-

mining-purposes, other than searching and boring for coal, but shall grant leases for these purposes:

"Provided that the Commission may carry on any operations for those purposes which may be requisite for preserving in good order premises that are not for the time being subject to a coal-mining lease."

The proviso was inserted in the Bill by the House of Lords, and its precise meaning is rather obscure. It must, of course, be read in conjunction with the definition of "coal-mining purpose" in Section 44. The writer feels that he cannot do better than quote Mr. Pritt, K.C.[3]:—

"Another place suggests that their powers should be to keep the shaft and airways in order, to prevent falls, to keep water down, and so forth, but they must not employ productive labour or win coal. . . . I should have said the true construction of the matter as it has come from another place was that if the proper way of keeping a pit in good order was to win coal you should win it, but that if you sold it to somebody you would at once get an injunction against you."

Valuation and compensation.

No doubt it might have been possible for the Commission to acquire the coal by compulsory purchase on the lines laid down by the Acquisition of Land Act, but this procedure would have been very difficult for two main reasons, viz.: (*a*) it would have meant that the State, through the Commission, would have been committed to a liability that for several years would have remained uncertain as to amount, and (*b*) it would have involved the temporary employment by the Commission of a large staff of valuers experienced in mineral valuations. It is doubtful that a sufficient number of persons having the necessary qualifications would have been available.

The magnitude of the task of valuation is apparent from the fact that, at the time of writing, applications for the registration of approximately 20,000 "holdings" have been received, and it is probable that many more have yet to come.

[3] *Hansard*, 6th July, 1938, col. 430.

It may be assumed that the difficulties indicated, no doubt amongst others, led the Government to favour a scheme whereby—

(*a*) the total purchase price, or amount of "compensation," should be prescribed by the Act, and

(*b*) the "royalty owners" would, in effect, be left to divide the total compensation amongst themselves, subject to such a measure of control as would, as far as possible, ensure a fair and expeditious apportionment.

It is now a matter of history that the total compensation which, for some mysterious reason, has become known as the "global figure," was determined in 1937 by a Tribunal presided over by Lord Justice Greene and having as its other members Mr. (now Lord) Justice Clauson and Lord Plender. The terms of reference recorded that the "net "average annual revenue" from coal royalties for the seven years 1927 to 1934 (inclusive) was £4,430,000. The Tribunal was asked to consider whether that income was likely in the future to increase, diminish or remain stable, and to indicate the value of the unworked coal by supplying the multiplier, or "number of years' purchase," to be applied to the basic figure of £4,430,000. The answer, as everybody knows, was "15," giving a figure of total compensation of £66,450,000. No doubt the figure is not nearly as "global" as many people hoped and expected, but it would be improper to express any views on this point in a paper of this character.

Sections 6 and 7 and the Third Schedule of the Act deal with the payment of compensation and are largely concerned with the machinery designed to effect an equitable apportionment of the £66,450,000. The first piece of machinery is the Central Valuation Board, which is charged with the duty of dividing the global figure into parts. In the writer's view this step is a very necessary one. It must be borne in mind that the process of valuing unworked coal is not an exact science. Generally speaking,

the value of a particular " holding " depends on the quantity of coal, the time and rate at which it is likely to be worked, and the royalty rate at which payment will be made. The first two factors, and frequently the third, are matters of estimate. When these estimates have been made, it is possible to state the potential royalty revenue on which the valuation is to be based. A rate or rates of interest to be applied to the potential revenue must then be determined and, last but not least, a formula selected for ascertaining the present value. Fortunately for the purpose of apportioning the total compensation, it is necessary only that the valuations shall be empirically correct. In other words, and quoting paragraph 13 of Part III. of the Third Schedule, that means shall be adopted " for " securing uniformity of valuation." It is obvious that any approach to uniformity can only be achieved by very close collaboration between the valuers entrusted with the task, and that it would be practically impossible between a large number of valuers dispersed throughout the country, dealing with widely differing conditions and possibly accustomed to different lines of approach to valuation problems.

To achieve uniformity of valuation within a particular locality amongst valuers who are familiar with each other and with local conditions is more hopeful of attainment. The Act therefore provides first for the division of the whole of Great Britain into " valuation regions " and for the allocation by the Central Valuation Board of a part of the £66,450,000 to each region. With the object of ensuring a fair allocation between regions, it is ordained that the Central Board shall consist of three independent members (one of whom, being a member of the legal profession, shall act as chairman), and one experienced mineral valuer in respect of each region. As is obviously necessary, a provisional constitution of the Board is prescribed for the purpose of dividing the country into regions.

By the time this paper is presented it will be known that the Central Valuation Board have divided Great Britain

into ten regions, and the " regional allocations " will have been made. The machinery for dealing with individual claims will consist primarily of ten Regional Valuation Boards. These Boards are to have a member of the legal profession as chairman, the other members being " persons " engaged in the management of mineral estates in the " region and having a knowledge of coal mining and " experience in the valuation of minerals."(4) The number of members to be appointed to a Regional Board is left to the discretion of the Board of Trade. It would appear fitting, however, that all the mineral surveyors with considerable management interests in a region should be included.

The Regional Board will review claims made by individual royalty-owners in respect of unworked coal in the region. They will then " settle a *draft* " of their (own) *valuation,* and notify the claimant accordingly. After being so notified, the claimant has a right to appear before the Board, either in person or by a technically qualified representative(5) (*i.e.,* " a person experienced in the valua- " tion of minerals or in the management of mineral " estates "). Presumably he will exercise that right only if the " draft valuation " is less than the " estimate of " value " which he has submitted.

Having given the claimant an opportunity of being heard, the Regional Board will " settle their *valuation,*" which will be irrevocable, unless the claimant elects to have it reviewed(6) by " a referee selected from a panel of " referees,"(7) the panel being appointed by the Board of Trade. The referee may, if he thinks fit, direct the Regional Board to " alter their valuation," and they are bound " to give effect to any such direction."(8) The " value " of a holding, as determined (*a*) in effect by

(4) Third Schedule, par. 4 (1) (*b*).
(5) Third Schedule, par. 11 (4).
(6) Third Schedule, par. 12 (1).
(7) Third Schedule, par. 12 (2).
(8) Third Schedule, par 12 (4).

agreement between the claimant and the Regional Board, or (*b*) by the Regional Board in the absence of an appeal to a referee, or (*c*) in effect, by a referee, is final, but it is important to observe that the " value " may be a sum of money quite different from the "amount of compensation" payable. This creates an entirely new precedent in legislation for compulsory purchase, and it is not surprising that it aroused much criticism in Parliament and elsewhere. The difficulty, however, is inherent in the method of predetermining the aggregate value of all the holdings. Of course if the Greene Tribunal, the Central Valuation Board, the Regional Valuation Boards and/or the referees were infallible, discrepancies between value and compensation would not occur, but it would, perhaps, be unduly optimistic to expect such widespread omniscience. It may be assumed, therefore, that there will be a difference between the " regional allocation " and the sum of the " values " of each holding within a region in respect of which a claim has been made. It will consequently be necessary, and the Act prescribes,(9) that a *pro rata* adjustment of each " value " shall be made. The " values " so adjusted will constitute the sums payable as " compensation " for each holding, and, of course, the sum of the adjusted values will be exactly equal to the " regional allocation."

The foregoing description of the process of apportioning the " global figure," complex as that process may appear, does not exhaust the difficulties. Four complications, it is suggested, are self-evident, viz.:—

(*a*) Having regard to the available personnel, and to the various functions that many of them may be required to fulfil, the task of valuing over 20,000 (possibly 30,000) separate holdings will take several years to complete.

(*b*) " It would be an obvious injustice . . . to take over the property some years before you are, in

(9) Section 7 (7).

fact, to be in a position to pay the individual the compensation for the property which you are compulsorily acquiring from him."[10].

(*c*) To secure a fair apportionment it is essential that all the valuations should be related to the circumstances pertaining to each holding on one particular date.

(*d*) Having regard to the nature of the " premises " to be valued, and to the unexpected changes of circumstance that are apt to occur, it is impossible to make valuations " as on " some date several years ahead.

The Act is designed to overcome these difficulties by provisions which have the following effect:—

(i) The acquisition of the premises by the Coal Commission is postponed until 1st July, 1942 (" the vesting date ").[11]

(ii) Subject to certain not unreasonable conditions the present owner is left in the enjoyment of his property until the vesting date.[12]

(iii) The " value " to be ascertained in respect of each holding is, in effect, an estimate of what the holding is likely to be worth on the vesting date according to the prospects as they appear on the valuation date. The estimate must, of course, be made " as if this Act had not been passed."[13]

In the writer's view the provisions indicated do successfully overcome the particular difficulties so far as it was practicable to do so. The precise nature of the valuation will be dealt with more fully at a later stage by a detailed consideration of the relevant provisions of the Act.

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[10] President of the Board of Trade, *Hansard*, 22nd November, 1937, col. 890.

[11] Section 3 (3). [12] Section 8. [13] Section 7 (4).

The foregoing notes deal, in broad outline, with the general scheme for transferring to the Coal Commission the unworked coal and certain rights associated or deemed to be associated with it. There are, however, certain provisions, either incidental, supplemental or transitional in character, that may usefully be the subject of comment and explanation.

Coal Commission's right to withdraw support from surface and liability in regard to compensation for surface damage.

The right to be acquired and the liability to be incurred by the Commission may be summarised briefly as follows:—

(*a*) Where the coal and the overlying surface are in the same ownership and the coal is the subject of a mining lease, such right of withdrawing support and such liability for damage as on the valuation date is enjoyed by or rests upon the mining lessee under the lease. The Commission's right to withdraw support continues so long as any of the coal remains ungotten.([14])

(*b*) When the coal and the overlying surface are in different ownerships and whether the coal is or is not leased, such rights and subject to such liabilities, if any, as to payment of compensation as are defined by the "instrument of severance."([14])

(*c*) Where the coal and the overlying surface are in the same ownership and the coal is not leased, the right of withdrawing support subject to payment of compensation for damage, but with special provisions (to which reference will be made at a later stage) relating to new buildings.([15])

([14]) Second Schedule, par. 5.

([15]) Second Schedule, par. 6.

Minerals associated with coal.

Where, on the valuation date, the right to work "minerals or substances" other than coal is demised under a coal-mining lease then in force, the Commission will acquire such minerals and substances automatically under the Act,[16] unless—

(*a*) the Commission, by notice given on or before 1st July, 1939, elect to exclude them; or[16]

(*b*) in the case of "minerals or substances which in the opinion of the Commission are or would normally be worked by surface working and not in association with that coal or anthracite" (*i.e.*, the coal or anthracite included in the demise)—unless the Commission voluntarily exclude them by notice as previously indicated, or unless, on or before 1st July, 1939, "any person interested" applies for their exclusion, in which case the Commission are bound to give a "direction" having that effect.[16]

It should be observed that compensation in respect of acquired minerals and substances other than coal will be paid out of funds additional to the £66,450,000. The amount will be settled either by agreement between the Commission and the claimant or by the Regional Valuation Board after giving both parties an opportunity of "being "heard." Either the Commission or the claimant may appeal to a referee.

Retained rights of mining lessees.

The acquisition by the Commission of the "acquired "interests"[17] is to be deemed to be subject to the rights of mining lessees under leases in force on the valuation date, but subject, unless the Commission otherwise ordain, to two exceptions, viz.:—

(*a*) Where a sub-lease has been granted, the first lessee

[16] Section 3 (3). [17] Section 7 (1).

(or intermediate lessor) loses his interest in the coal which he has sub-let, and the underlessee will hold directly from the Commission.([18])

(*b*) Where neither the lessee nor any person claiming under him is engaged in carrying on the business of coal-mining, the lessee's interest will pass. This will apply also where a person claiming under the lessee is engaged in the business of coal-mining, unless he has "a substantial beneficial interest in the exercise of the rights conferred by the mining lease."([19])

No doubt it is proper that, in future, there should be direct relations between the Commission and the mine-owner, and that profiteering by lessees out of coal that can be more economically worked by someone else, should be stopped. It must also be remembered that the past royalty revenue, which was taken into account by the Greene Tribunal in arriving at the £66,450,000, included the profit royalty of the first lessees. There are, however, provisions (Section 19) which make illegal the granting of a sub-lease after the valuation date, and which restrain a lessee from assigning or parting with the possession of any coal or mine of coal without the consent of the Commission. It may be assumed that the Commission will not grant leases except to persons who are likely to be capable of working the coal demised and by whom it can be most economically worked. Unification of ownership will undoubtedly make this easier, but the prohibition of sub-leasing coal which is the subject of an existing lease may possibly lead to difficulties. Lessees of coal, even if they cannot work it themselves, are not anxious to part with it, unless they can derive some benefit. Presumably, however, the payment of a lump sum or of a profit royalty might still be made a condition of assignment, and, if so, what has been customary in the past may, in effect, continue in the future.

([18]) Section 5 (2) (*a*). ([19]) Section 5 (2) (*b*).

The purpose of the second exception is clear. Failing some such provision, the object of Part I. of the Act might have been defeated. For example, before the passing of the Act, but in anticipation of possible legislation, a royalty-owner might have granted a lease to a private company at a nominal minimum rent and a royalty rent of, say, one-tenth of a penny per ton. If in such a case the lessee's interest had been retained, the owner and his successors, as owners of the share capital of the company, might have enjoyed the future revenue derivable from the coal in the form of a super-royalty instead of a royalty. Of course the compensation in such a case would have been reduced to a more or less nominal amount, but the Coal Commission would have paid the full £66,450,000, and would have lost revenue to which they were entitled.

Owner-workers.

It will be remembered that, during the passage of the Bill through Parliament, considerable pressure was exercised to induce the Government virtually to exclude from the operation of the Act coal belonging to colliery proprietors which they were working or proposing to work themselves. The suggestion was that the compensation attributable to such coal should be assessed but retained by the Commission, and that the "owner-worker" should be granted a lease in perpetuity at a peppercorn rent. This agitation met with a large measure of success, but in a form slightly different from that suggested. The owner-worker's compensation will be assessed and paid like that of any other royalty-owner, but if he owned the coal on 10th November, 1937, he will be entitled to a lease on such terms "as to "secure that his financial position . . . shall be neither "adversely affected nor improved by the fact that, in lieu "of his remaining entitled to the fee simple in the coal, "compensation . . . becomes payable and he becomes "liable to a periodical payment of rent . . ."([20])

([20]) Section 13 (2).

It remains to be seen whether the spirit of optimism which inspired the draughtsman in framing these provisions will be justified in practice. Certain difficulties of application will be considered at a later stage. It must be gratifying to colliery proprietors that their financial position will not be adversely affected. Other royalty-owners may well wish that a similar regard for their interests had been exhibited, and it is difficult to see any sound reason for the differential treatment. It would have been manifestly unfair, because of his capital expenditure on developing the colliery, if there had been any suggestion that the colliery proprietor should be deprived of the opportunity of making a profit from the working of coal which he had acquired. His position in this respect would, however, have been secured by his obtaining a lease on normal terms. As regards interest on or the recovery of capital invested in the coal, he would have been no worse off than any other purchaser, if they had all been treated alike.

Mines (Working Facilities and Support) Act, 1923.

Rights to work coal and ancillary rights granted by Orders of the Railway and Canal Commission prior to 1st July, 1942 (the vesting date) are to remain in force for the periods for which they were granted. The power of that Commission to rescind or vary a working facilities order subsisting on the vesting date is preserved. With these exceptions, the functions of the Railway and Canal Commission, as regards coal-mining, will be limited, after the vesting date, to applications relating to ancillary rights (the scope of which is somewhat enlarged) and relating to interests in coal and coal mines which have been preserved on enfranchisement and are further preserved by the 1938 Act to the tenant of lands which were formerly copyhold.([21])

Consolidation of leases.

It may be supposed that one of the immediate causes of

([21]) Section 22.

the introduction of the Coal Bill was the report of the Coal Mines Reorganisation Commission, presented in 1935. In that report the Reorganisation Commission stressed the difficulties which beset any schemes of colliery amalgamation by reason of covenants to work and liabilities to pay minimum rents, &c., which arose under numerous separate leases.

Apart from the controversial question of amalgamations and the desirability or otherwise of facilitating such schemes, it is generally agreed that the multiplicity of separate leases, with their minimum rent obligations, has proved more onerous in recent years. This is the result of the adoption of intensive machine-mining methods and the degree of concentration which such methods entail. They may, and frequently do, result in a greatly increased production from two or three royalty areas, and the suspension of production in others. The result has been a substantial addition to the annual rent-charge and a heavy accumulation on " shortworkings " account.

For the reasons indicated it is not surprising that the Act should contain provisions([22]) whereby, before the vesting date and over a given area, a single lease can be substituted for a number of separate ones. Where the Coal Commission, by agreement with a mining lessee, decide to put these provisions into operation, steps are taken for determining the " standard rent " which each royalty-owner might reasonably have expected to receive (if a consolidation scheme had not been made) for each half-year between the date on which the consolidated lease takes effect and the vesting date. The amount of the standard rent for each half-year is to be settled by agreement between the Commission and the individual royalty-owner, or, in default of agreement, by arbitration.

A " receiver " is to be appointed in respect of each " lease consolidation scheme," who is to act as agent for all the royalty-owners concerned. He is to be responsible for the collection of the rents payable under the single

([22]) Section 12.

lease and for the distribution of those rents amongst the beneficiaries. If for any half-year the rent receivable falls short of or exceeds the aggregate of the standard rents for that half-year, the deficiency is to be made good by, or the excess paid to, the Commission.

Payment of compensation.

The compensation in respect of each holding is payable in cash on 1st July, 1942, or, if the amount has not then been ascertained, is payable, with interest from that date, as soon as the ascertainment has been made. The Act contains provision ([23]) empowering the Commission to make payments on account in respect of any holding. Such payments cannot be made, without the consent of the recipient, prior to 1st January, 1940, or unless three months' notice has been given.

It is hoped that the foregoing notes may have been of some interest to readers who are not, perhaps, closely concerned with the application of Part I. of the Act, and are content with what might be called a topographical survey of its provisions, showing the main features and ignoring the ditches and barbed-wire fences.

Part II.

EFFECT ON VARIOUS INTERESTS.

It is proposed in the second part of this paper to examine the provisions of the Act in greater detail and to attempt to show their effect on various interests. For this purpose it is convenient to have regard firstly to the period between 29th July, 1938, the date of the passing of the Act, and 1st January, 1939 (the Valuation Date); secondly, to the "Interim Period" from 1st January, 1939, to 1st July, 1942 (the "Vesting Date"), and thirdly, to the effect after the vesting date.

([23]) Third Schedule, par. 19.

For the sake of clearness it may be useful to indicate the meaning assigned to a number of words and expressions, as follows:—

Coal—means coal, cannel and anthracite and includes any minerals or substances other than coal which are "comprised in a lease subsisting at the valuation date which confers a right to carry away both that coal or anthracite and those other minerals or substances," *i.e.*, unless such other minerals or substances have been excluded from vesting by a direction given by the Commission.

Coal—means coal, cannel or anthracite.

Mine of Coal—means a space which is occupied by coal or which has been excavated underground for a coal-mining purpose, and includes a shaft and an adit made for a coal-mining purpose.

Freehold Reversioner—means the owner of coal and/or of a mine of coal which on the valuation date is the subject of a mining lease, in respect of his interest in such coal or mine of coal.

Freeholder in Possession—means the owner of coal and/or of a mine of coal that, on the valuation date, is not the subject of a mining lease, in respect of his interest in such coal or mine.

Leasehold Reversioner—means a mining lessee in respect of his interest in coal or a mine of coal which, on the valuation date, is the subject of a sub-lease granted by him.

Holding[24]—means coal and mines of coal together with the property and rights acquired by the Commission therewith (or interests therein) which in accordance with Part I. of the Third Schedule are to be treated as a unit for compensation purposes.

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[24] Section 7 (2).

29TH JULY, 1938, TO 1ST JANUARY, 1939.

Section 18 requires "all persons interested in coal or a "mine of coal" to refrain from any abnormal dealing "calculated to give a factitious or artificial value to a "holding or to prejudice the interests or powers to be "acquired by the Commission." These provisions cease to apply as from the valuation date, and are superseded by Section 8, to which later reference will be made. An example of a dealing prejudicial to the interests or powers of the Commission would be the granting of a lease at abnormally low rents in consideration for a substantial lump sum payment. Whether or not such a transaction, entered into between 29th July, 1938, and the valuation date, would be void, or whether the Commission could successfully claim "damages" would presumbly be matters for the Courts to decide.

It would, no doubt, have been possible for members of other professions to devise transactions calculated to create factitious values, but few that could have benefited one party without adversely affecting another. Presumably it will be necessary, for valuation purposes, to ignore dealings which contravene Section 18.

THE INTERIM PERIOD.

1ST JANUARY, 1939, TO 1ST JULY, 1942.

THE FREEHOLD REVERSIONER.

Unless the Commission elect to exercise their powers under Section 12 for consolidation of leases, his relations with his lesseees, and his rights, including the right to receive rents and royalties accruing,[25] are not affected except that—

(*a*) he must, by inference, be deemed to be under an obligation to exercise such measure of care as is exercised under the ordinary practice of the man-

[25] Section 8 (*c*).

agement of mineral estates by prudent owners in relation to property that is to continue in their ownership ;([26])

(*b*) he cannot vary or renew a mining lease without submitting a draft of the proposed instrument of renewal or variation to the Commission.([27]) Having done so, he may so vary or renew the lease unless " in proceedings commenced by the Commission within two months from the date on which they have been notified of the proposal, the Court makes a declaration that the proposal is not in conformity " with the " rules of law and equity that regulate rights and obligations in relation to land that is the subject of a contract for sale."([28])

If the Commission do elect to exercise their powers for the consolidation of leases, they may " in agreement with " the working lessee," and as part of the consolidation scheme, cause the existing lease to " be deemed to have " been determined."([29]) Under such circumstances the owner will virtually lose the control of his property, but for the remainder of the interim period he will be entitled, each half-year, to receive a payment equal to the rents and royalties that he could have expected to receive for that half-year if the consolidation scheme had not been made.

The Fourth Schedule contains somewhat elaborate provisions for the administration of such a scheme. So far as they affect the freehold reversioner, the most important provision is obviously that which deals with the determination of the rent (called the " standard amount of rent ") that he might otherwise have expected to receive. Unless it is manifest that a minimum rent only would be payable, the " determination " must of necessity be a matter of

([26]) Section 8 (*b*).
([27]) Section 9 (1).
([28]) Section 9 (3) and Section 8.
([29]) Fourth Schedule, par. 7 (2).

estimation. Paragraph 5 (1) of the schedule provides for determination by agreement or by arbitration.

THE FREEHOLDER IN POSSESSION (OTHER THAN THE OWNER-WORKER).

Presumably an owner of unleased coal, being deemed to have entered into a contract to sell it to the Commission, cannot sell it anyone else, but it would appear to be within his power to sell his rights of enjoyment during the interim period and his right to compensation.

He is under the same obligation as the freehold reversioner to exercise proper care in the management of his property, ([30]) and his right to grant mining leases is subject to the same conditions([31]) and limitations as those applicable to the renewal or variation of an existing lease. A draft of the lease must be submitted to the Commission and the parties can only be sure that the lease will be effective if the consent, either tacit or expressed, of the Commission has been secured.

A freeholder in possession cannot be affected by a lease consolidation scheme without his consent,([32]) unless, of course, he has granted a lease after the valuation date. Presumably his "standard rent" would be based on the payments he might have expected to receive if he had granted an independent lease and no consolidation scheme had been made. If this is correct, it is difficult to imagine any sound reason why his consent should be withheld.

THE OWNER-WORKER.

The owner-worker is under the same obligation as other owners to exercise proper care in management. Subject to that obligation he may continue to work the coal without restraint and "is entitled to the . . . benefit of the . . . "profits accruing"([33]) up to the vesting date.

([30]) Section 8 (*b*).

([31]) Section 9 (3).

([32]) Fourth Schedule, par. 1 (2).

([33]) Section 8 (*c*).

As regards the granting of leases to other persons, there is no distinction between the owner-worker and any other freeholder-in-possession. Having regard to the owner-worker's right, under Section 13, to a lease from the vesting date, of the coal previously held by him, on special terms involving the amount of compensation he has received, it is difficult, except on one assumption, to see how his coal could be included in a consolidation lease. This could be done if it is assumed that the owner-worker on the vesting date will hand back his compensation to the Commission, and if the rents payable under the consolidated lease do not include any payment for such coal.

THE LEASEHOLDER REVERSIONER.

His position appears to correspond, in every respect, with that of the freehold reversioner, except that he cannot extend or renew the sub-lease for any period after the vesting date. His interest in the sub-leased coal may be merged in a consolidation lease and be the subject of the determination of a "standard rent."

PERSONS NOT LEGALLY "INTERESTED" IN COAL.

A colliery proprietor must be treated as within this category as regards unworked coal which he neither owns nor holds in lease. Presumably neither he nor any other person can buy such coal, though they may buy the right to receive the rents accruing before, and the compensation payable on, the vesting date.

It seems very doubtful that any person, after the valuation date and without the consent of the Coal Commission can acquire a right, exercisable after the vesting date, to have coal left unworked for the support of surface lands if the coal and the surface are vested in the same owner on the valuation date, or if, under an instrument of severance, a right to withdraw support from the surface is then annexed to the coal. There are, however, two exceptions to this general statement, viz.:—

(*a*) If there has been no severance and the coal is the subject of a mining lease which does not give the lessee the right to withdraw support from any particular parts of the surface, presumably the owner can sell such parts with a right of support.

(*b*) It would be competent for the Railway and Canal Commission, in pursuance of their powers under Section 8 of the Mines (Working Facilities and Support) Act, 1923, to confer on an applicant, in respect of his surface, a right of support (from coal) which did not exist on the valuation date or which would not exist on and after the vesting date. If the Railway and Canal Commission did make such a grant, and if the application had been sent to the Board of Trade before the Commission had published a notice of their intention to grant a lease of the coal (or within six months of such publication) no compensation would be payable by the applicant to the (Coal) Commission in respect of the limitation so imposed upon them.([34])

Except for the creation of a new obstacle to the acquisition of a right of support, the interests of surface-owners who do not own the subjacent coal (whether or not their lands were formerly of copyhold tenure) do not appear to be in any way affected during the interim period.

On and After the Vesting Date.

The Freehold Reversioner.

A.—In respect of his coal and mines of coal.

The owner loses his reversionary interest in and the Commission take—

(i.) All unworked *coal*.

(ii.) All minerals and substances other than *coal* which,

([34]) Second Schedule, par. 6 (4).

on the valuation date, are comprised in a coal mining lease (" which confer a right to work and carry away both that coal or anthracite and those other minerals or substances ") except such of them as the Commission may, by direction, exclude from vesting.

(iii.) All underground workings, roadways, shafts, adits, &c., made or used for the purpose of working coal and such other minerals or substances.

(iv.) The right that he enjoyed under the lease to distrain for arrears of rent, except in so far as such right may continue to apply to goods or property above ground. He may, however, require the Commission to take an assignment of any debt due by his mining lessee in respect of rents (for premises vesting in the Commission) which became payable after 1st July, 1941, and he can sell any other such debts to the Commission if they are willing to buy.([35])

(v.) Any rights of occupying surface lands which are annexed to the ownership of the coal or mine of coal.

Items (i.) and (iii.) are " principal coal hereditaments " and will be the subject of compensation out of the global sum of £66,450,000. Items (ii.) and (v.) are " subsidiary " coal hereditaments " and, in cases where they can be shown to have a value, will be the subject of compensation to be determined independently.

B.—In respect of the support of his own surface.([36])

There will be vested in the Commission rights of withdrawing support from the surface such as were, on the valuation date, enjoyed by the mining lessee under the terms of the lease ; that is to say, rights " similar in all

([35]) Section 10.

([36]) Second Schedule, par. 5.

"respects" whether as regards "terms, conditions, "extent, . . . or otherwise." The Commission will, however, enjoy such rights so long as any coal remains ungotten, regardless of the term of the lease, which, indeed, may have expired before the vesting date.

It seems possible that considerable difficulties may arise from the practical application of paragraph 5 of Part II. of the Second Schedule. As regards the lessee's right to withdraw support, many older leases are extremely vague, and it must be borne in mind that the Courts have always been unwilling to imply such a right, unless the words used in the lease or other circumstances of the case have compelled them to do so. Moreover, in the writer's experience, it is only in rare cases that the mining lessee has been granted a right to withdraw adjacent support from surface lands belonging to the lessor, but not overlying the demised coal. In practice the lessee has been permitted to withdraw support from surface lands both overlying and adjoining the demised coal, because the lessor has had a strong incentive to allow the maximum quantity of coal to be worked. After the vesting date that incentive will have gone. It is, however, probable that the freehold reversioner, in estimating the value of the holding, will assume that a right to withdraw support from the surface is annexed to his coal, unless this is demonstrably untrue, and except as regards surface lands or buildings that he wishes to be supported and the coal supporting which he is prepared to exclude from his estimate.

In many mining leases the lessee's right to withdraw support is limited and qualified by his obligation to give a notice of the approach of his workings to buildings, and by the lessor's right to give a counter-notice requiring a pillar to be left for their support. Presumably, after the vesting date, the lessee will serve such notice on the Commission, who will in turn give notice to the owner of the building, the owner being the freehold reversioner or his successor in title. For reasons already indicated, the owner, being the lessor of the coal, has in the past refrained

from giving a counter-notice unless the risk of damage has outweighed the loss of royalty. Indeed, under favourable conditions, the working of coal has been permitted under large mansion-houses of great value. After the vesting date the owner may be tempted to give a counter-notice under circumstances in which he would not have done so if he were still benefiting from the working of coal. It must, however, be borne in mind that the mineowner might then apply to the Railway and Canal Commission. In that event the building owner, as an objector, might well be asked embarrassing questions about his practise as regards similar buildings in the past and about his estimate of value for compensation purposes. If, however, he had purchased the surface, subsequently to the valuation date, and had never had any interest in the coal, it is surmised that such questions would be less inconvenient.

Much more might be written on this particular question, but it is felt that in a paper of this character it is sufficient to draw attention to the difficulties.

C.—In respect of overlying surface lands not belonging to him.

Whatever rights are annexed to the coal or mine of coal will be vested in the Commission. It should be observed that rights may have become annexed either by an instrument creating a severance of ownership between the surface and the coal or by a mining lease. In cases where there has been "annexation" in both ways it would appear that the rights vested in the Commission must be those defined by the instrument of severance of ownership. The mining lessee cannot enjoy greater rights, but he may not enjoy them in full. For example, a landowner may have first leased his coal subject to an obligation on the part of the lessee to pay compensation for surface damage, and he may subsequently have sold his surface reserving the minerals with a right to work and to withdraw support without liability. The power to confer on the surface-owner a right of compensation may or may not have a

value, depending on whether the judgment in the case of *Westhoughton* v. *Wigan*(37) is applicable. The power to confer immunity from liability on the mining lessee certainly should have a value unless the risk of damage is negligible. The point to be remembered is that, after the vesting date, the freehold reversioner will have no interest either in the surface or in the coal. This applies not only to a right to withdraw support, but also to any rights of entering on the surface for " coal-mining purposes " which have been reserved out of a sale of surface lands, and have thus become annexed to the coal.(38) Such rights, or " surface servitudes," will have become vested in the Commission, and it is believed that this is the only instance in which they acquire rights of user of surface lands under the provisions of the Act. The reason, presumably, is that such rights, being incorporeal hereditaments, would cease to exist at all, if they did not pass with the coal to which they are annexed.

It is worth noting that, where an owner of coal has covenanted with a surface-owner to leave support for surface lands or buildings, assuming, of course, that such a covenant does not conflict with the rights enjoyed by the mining lessee, that covenant is binding on the Commission, and the owner of the coal is indemnified against any breach of the covenant.(39)

D.—In respect of surface lands belonging to him and demised for colliery purposes.

All such surface lands remain vested in the reversioner, and the contractual relations between him and his lessee in respect of such lands are not disturbed by the Act. Provision is made, however, for the apportionment of any rent or royalty which is payable partly in respect of surface

(37) *Westhoughton U.D.C.* v. *Wigan Coal and Iron Co.*, [1919] 1 Ch. 159.

(38) Second Schedule, par. 2 (2).

(39) Second Schedule, par. 2 (4).

lands, and partly in respect of coal and mines of coal or of property and rights annexed thereto.([40])

If the reversioner and the Commission fail to agree on such an apportionment, the matter is to be referred to arbitration.

It is clear that a precisely similar apportionment must be made, before the vesting date, by the Regional Valuation Board for the purpose of ascertaining the value of "acquired interests." The Regional Board are required to keep a record of all such apportionments,([41]) and the arbitrator is directed to "have regard to," but presumably is not bound by, the allocation so made.([42]) The costs reasonably incurred by the reversioner in connection with the reference are payable by the Commission unless the arbitrator directs otherwise on the ground of unreasonableness or negligence.([43])

Having regard to the terms of compensation, the reversioner may well desire that the part of such composite rent or royalty assigned to his surface should be a relatively large one. It would, however, be folly, for the purpose of the "estimate of value" to be submitted to the Regional Board, to show an allocation to the surface of a greater amount that would be likely to be awarded by an arbitrator as applicable to the future. Such a course might have the effect of diminishing the compensation received for the coal and mine without any corresponding advantage being actually realised.

The proper course in making such an apportionment would appear to be that of having regard to the separate rent for the surface that would have been appropriate at the time of the granting of the lease. For example, it would appear to be unjustifiable to have regard to buildings, &c., which have been since erected, because no con-

([40]) Section 11.
([41]) Section 11 (4).
([42]) Section 11 (2).
([43]) Section 11 (3).

sideration for them could be included in the composite rent or royalty.

The mining lessee is protected by certain amendments of the 1923 Act against any attempt on the part of the reversioner to impose unreasonable terms on the renewal of a lease of surface lands, &c.(44) These amendments empower the Railway and Canal Commission to grant a right to use and occupy works erected for a " coal-mining " purpose " or " dwellings for persons employed in con- " nection with the working of coal " for the purposes for which they were erected. In determining what, if any, " compensation or consideration " is to be paid, the Railway and Canal Commission is directed to " have regard " to " the rent previously reserved by the lease.

THE FREEHOLDER IN POSSESSION (OTHER THAN THE OWNER-WORKER).

A.—In relation to his coal and mines of coal.

On the vesting date the freeholder loses:—

(i.) All unworked *coal.*

(ii.) All shafts, adits, underground roadways, &c.; which have been excavated for a coal-mining purpose.

It should be observed that as regards a freehold in possession the Commission do not take any mineral other than coal, cannel coal and anthracite.

B.—In respect of the support of surface lands belonging to him on the valuation date.

The Commission acquire:—

" a right to withdraw support from that land so far as may be reasonably requisite for the working of any coal, subject to an obligation either—

(*a*) to pay proper compensation for damage arising from such working to that land ; or

(44) Section 22, pars. 3 and 4.

(*b*) with the consent (which shall not be unreasonably withheld) of the person who would otherwise be entitled to claim compensation for that damage, to make good that damage to the reasonable satisfaction of that person and without expense to him ;

which obligation shall extend to buildings and works on that land whether constructed before or after the vesting date "([45]).

In considering the foregoing provisions it should be remembered that the amount of compensation which the freeholder (other than the owner-worker) will receive will be relatively small and in many cases negligible. This must inevitably be the case, because the prospect of working his coal is, generally speaking, remote as compared with coal which is in lease. The freeholder is, therefore, entitled to expect full protection as regards surface damage.

Whether or not the Act gives him all that he is entitled to expect is doubtful. It is not unusual for mining leases to impose on the lessee a liability for damage (apart from damage to buildings) to " the surface of the described " lands or to any crops, drains, ditches, fences, cattle or " other things for the time being thereon or therein." If the obligation to pay compensation for damage " to that land " does not include liability in respect of crops, &c., cases of hardship may arise.

Another difficulty may occur in connection with the liability for damage to buildings. There are cases where land has been purchased in mining districts for the erection of important industrial premises, and it has been thought essential, even at considerable expense, to buy the coal as well as the surface in order to avoid all risk of damage. The Commission acquire that coal with the right to work and to withdraw support from the surface, subject to an obligation, as regards buildings and works, to pay compensation for or to make good structural damage only. But, if industrial operations are interfered with, mere structural damage may be insignificant by comparison with the consequential losses sustained.

([45]) Second Schedule, par. 6 (1).

No doubt the Commission will exercise their powers with discretion, and will have regard to the good of the community, but will a potential purchaser of a factory site be content to assume that they will always do so? If not, the freeholder may be seriously prejudiced as regards selling his land. It is true that the purchaser or the freeholder himself could apply to the Railway and Canal Commission for the grant of a right of support. It is also true that, if such a right is granted before the coal is leased, the grantee will not be called upon to pay for it. Moreover, in cases where such a course would appear to be justifiable, the Coal Commission could apparently impose on their mining lessees obligations to the surface owner additional to those which, by the Act, rest upon the Commission themselves.

Paragraph 6 (3) of the Second Schedule contains elaborate provisions relating to buildings or works erected after the Commission have published a notice of their intention to grant a lease of the subjacent or adjacent coal conferring on the lessee a right to withdraw support.

Notice of the intention to erect all such buildings or works must be given to the Commission who " may make " such proposals as to the materials for and method of " construction of the foundations as appear to them to be " desirable for minimising damage in the event of sub- " sidence." If the owner of the buildings or works adopts such proposals, the additional expense incurred by him in so doing will be refunded by the Commission, and he will be entitled to compensation for any subsidence damage which may occur notwithstanding the precautions adopted. If he does not adopt the proposals, his right of compensation for damage will not extend " to any damage that could " have been avoided if they " (*i.e.*, the buildings or works) " had been so constructed." The limitation indicated suggests a good deal of scope for expert witnesses and some knotty problems for an arbitrator.

In practice it seems likely the proposals for additional precautions in construction will emanate from the mining

lessee and that the cost will be borne by him. Having regard to the restrictions imposed on the Commission by Section 2 (2) it is unlikely that, except in very rare instances, they will themselves exercise the right to withdraw support.

It is to be hoped that the provisions relating to new buildings will not arouse an excessive interest on the part of the jerry-builder.

C.—In respect of overlying surface lands not belonging to him.

The effect of the Act is precisely the same as that previously described in relation to the freehold reversioner, except that the position is not complicated by the existence of a lease. Of course the freeholder will retain whatever rights may be annexed to his minerals other than *coal.*

THE FREEHOLDER IN POSSESSION (THE " OWNER-WORKER ").

The expression " owner-worker " is a convenient one and must be interpreted in the light of the Act to mean " a person carrying on the business of coal-mining immedi- " ately before the vesting date, who is then beneficially " entitled (whether or not subject to a mortgage) to the " entire fee simple in coal or a mine of coal that is not subject at that date to a coal-mining lease "([46]).

A.—In relation to his coal and mine of coal.

Except that, on certain conditions, he is entitled to a lease of the coal and mine and, in certain circumstances, to require that such lease shall be on special terms, the effect of the Act is the same with regard to the owner-worker as it is with regard to any other freeholder in possession. The premises that vest in the Commission are enumerated in the preceding section of this paper and a repetition of them is unnecessary.

([46]) Section 13 (1).

The conditions to be fulfilled in order that he may be entitled to a lease are as follows:—

(*a*) Before 1st July, 1939, he must have

(i.) made an application for the registration of his holding and([47])

(ii.) served " a notice of claim for compensation " on the Commission([48]).

(*b*) Before 1st July, 1942, he must have

(i.) submitted an " estimate of value " to the Regional Valuation Board([49]) and

(ii.) made a written application to the Commission for the grant of a lease([46]).

The circumstances in which he is entitled to require that the lease shall be on special terms are:—

(*a*) He must have acquired the fee simple in the coal before 10th November, 1937([50]).

(*b*) He must, apparently, be able to show that he is able and intends to work the coal himself.

If the owner-worker has acquired the coal after 10th November, 1937, the lease is to be " subject to conditions " with respect to rent and otherwise which shall not in " any case be more onerous to the lessee than the conditions " customary in the district or, where there are no customary conditions or the customary conditions are not " applicable, than the conditions to which a person not " entitled . . . might reasonably have been expected to " agree "([50]).

As regards coal acquired before 10th November, 1937, the conditions of the lease granted to the owner-worker are to be " so framed as to secure that his financial position " in respect of his business of working the coal shall

([47]) Third Schedule, par. 6.

([48]) Third Schedule, par. 9 (1).

([49]) Third Schedule, par 11 (1).

([50]) Section 13 (2).

" neither be adversely affected nor improved " having regard to—

(*a*) the amount of compensation to which he is entitled ;

(*b*) the rent specified by the lease ; and

(*c*) the fact that he will no longer be required to pay mineral rights duty and royalties welfare levy([51]).

If the quantity of coal and the rate of working could be predicted with precision and certainty, it would no doubt be possible to frame a lease on normal lines which would produce the result required. Alternatively it would be possible to frame a lease *with the object of securing* that the owner-worker's financial position should not be affected one way or the other. It is, however, impossible to predict with precision or certainty, and the conditions of the lease must not merely be designed to produce but must produce the required result.

In the writer's opinion financial equilibrium can only be achieved with certainty by one or other of two methods which are fundamentally the same, viz. :—

(*a*) The compensation to be handed back by the owner-worker to the Commission on the vesting date and a lease to be granted at a peppercorn rent ; or

(*b*) Provision to be made in the lease for the payment of rent to cease when the aggregate amount rent paid plus interest calculated thereon at an appropriate rate is equal to the amount of compensation plus interest calculated at the same rate.

In the latter case a fixed annual rent would appear to be essential inasmuch as there could be no guarantee that a rent based on output would continue to be payable. In either case, in order that the owner-worker's financial position shall not be improved, it would appear necessary

([51]) Section 13 (2).

that he should, year by year, pay to the Commission an amount equal to the sum that he would have been called upon to pay by way of mineral rights duty and royalties welfare levy, if the coal had continued to be vested in him.

Where the owner-worker can call for a lease on the special terms indicated in Section 13, the amount of compensation he receives must be, to him, a matter of little or no importance. In order to be entitled to a lease, however, he must make a claim for compensation however perfunctory his interest in so doing may be.

There are cases where a colliery company own unlet coal, &c., which cannot be worked from their existing pits, If such coal was acquired prior to 10th November, 1937, and they have fulfilled the necessary conditions, they can apparently require a lease to be granted by the Commission. It seems doubtful, however, that they would be entitled to the benefit of the special conditions unless they intended to and did, in fact, work the coal themselves. The protection afforded to the owner-worker by Section 13 (2) relates to " his financial position in respect of " *his* " *business of working the coal.*" If he obtains a lease on the strength of his intention to work, and subsequently wishes to transfer the benefit of the lease to some other colliery proprietor, it would be necessary to obtain the consent of the Commission to an assignment. Whether or not the Commission would expect an adjustment to be made is an interesting speculation.

B.—In respect of the support of surface lands belonging to him.

The right acquired by the Commission and the conditions on which that right may be exercised are identical with those relating to any other freeholder in possession. As regards the liability of the Commission for surface damage, it may be assumed that they would require an indemnity under the conditions of the lease, so that, in this respect,

the position would, in practice, remain exactly as it was before the vesting date.

C.—In relation to overlying surface lands not belonging to him.

The rights of withdrawing support, &c., annexed to the coal by the instrument of severance of ownership will be vested in the Commission, but the owner-worker will be entitled to have these rights included in the lease. The conditions of the lease, in so far as they relate to such rights, are to be determined on exactly the same principles as those which apply to the coal.

THE LEASEHOLD REVERSIONER.

On and after the vesting date, and unless the Commission otherwise direct, he loses all interest in coal and mines of coal which were the subject of a sub-lease granted by him and in force on the vesting date([52]). In view of Section 19 (1) which, with minor exceptions, prohibits the granting of sub-leases of coal after the valuation date, it seems unlikely that the Commission will give a direction that the leasehold reversioners' interest in sub-leased coal shall be a " retained interest " unless the circumstances are exceptional. There may be cases where several parcels of coal have been sub-let at a uniform royalty rate, although the royalty rates reserved under the respective head leases vary. If the royalty rate reserved by the sub-leases were an average, the intermediate lessor would make a profit from one parcel and incur a loss on another. Although, taking the sub-leases as a whole, he might neither gain nor lose, he will be entitled to compensation in respect of his interest in the parcels in respect of which he would have made a profit, without regard to the losses that he would have incurred in respect of the others. He would, therefore, suffer no real hardship, assuming, of course, that his compensation were adequate, if the Commission

([52]) Section 5 (2) (*a*)

were to direct that he should retain his interest in the parcels which would show an adverse balance. It is surmised that the power to exclude such interests from vesting was inserted in the Act to meet cases of this kind.

If the sub-lease relates to coal and other minerals, and the Commission by a direction given under Section 3 (4) (*b*) exclude all or any of such other minerals from vesting, the sub-lease would apparently remain in force as regards such excluded minerals and the interest thereon of the intermediate lessor (or leasehold reversioner) would continue.

It is important to bear in mind that what is acquired by the Commission from the leasehold reversioner is not a coal or mine, but only an interest arising under a lease. In estimating the value of coal held in freehold reversion, it may be reasonable to have regard to a potential revenue accruing after the termination of an existing lease, on the assumption that the lease is extended or renewed. In estimating the value of a leasehold reversion, a similar assumption would be justifiable provided that no revenue was deemed to accrue after the expiration of the term of the head lease. It is obvious that the interest which is being valued could not survive that event.

The valuation of a leasehold reversion must necessarily be based on the difference between the payments expected from the sub-lessee and those to be made to the head lessor in respect of the premises sub-leased. Where the potential profit arises solely from the payment by the sub-lessee of a royalty in excess of that reserved by the head lease the problem is a simple one. Unfortunately this may not be the case where a minimum rent is payable under the head lease and there are shortworkings. In such a case it may be difficult to estimate how much of the minimum rent payable to the head lessor is properly attributable to the sub-leased coal and how much to the coal in respect of which the reversioner retains a leasehold interest.

Where the interest of a leasehold reversioner is acquired, it will generally be necessary for an apportionment to be

made([53]) of the rents payable under head lease in order to determine the basis of future payment to the Commission by the reversioner who will have ceased to be an intermediate lessor. This is similar to the apportionment to be made in the case of the freehold reversion where a composite rent is payable, *e.g.*, for coal and surface rights. As in that case, provision is made for arbitration and the arbitrator is directed to " have regard to," but presumably is not bound by, the apportionment made by the Regional Board for valuation purposes([54]).

A feature of the Act that has always seemed to the writer to be unfair is that the leasehold reversioner loses his interest for all time in the coal which he has sub-let, regardless of the respective terms of the lease and sub-lease. If the Act had not been passed, coal which had been sub-let for a term expiring on, say, 29th September, 1942, would have been held by the leasehold reversioner for the remainder of the term of the head lease. Indeed he may have anticipated working it himself. Under the provisions of the Act it will be competent for either party, or for anyone else, to apply to the Commission for a new lease. The redeeming feature of such a case is that it may be assumed that the Commission will make a grant to the applicant by whom the coal can be most economically worked.

THE SUB-LESSEE.

The position of the sub-lessee as regards coal comprised in the sub-lease will not be materially affected([55]). His tenure will be directly from the Commission, and the change of lessor will not, in itself, have any effect on the rents payable.

As regards any surface rights or excluded minerals which may have been included in the sub-lease, that deed will

([53]) Section 11 (1).
([54]) Section 11 (2).
([55]) Section 5 (1).

remain in force subject to any necessary apportionment of the rents.

THE EX-COPYHOLDER.

The writer has never fully understood the mysteries of copyhold tenure. He has, nevertheless, known cases where a landowner has granted building leases for a term of, say, 99 years without reserving the minerals. These cases have created considerable difficulty by reason of the fact that the " land " which has been leased consists in part of seams of coal. The building lessee has been unable to make a grant of the right to work the coal, because he is merely a lessee without the right to remove any part of the land comprised in his lease. The landowner has been equally unable to grant a right to work, because his lessee is entitled to possession for the remainder of the 99 years, and still more because he could not give a mining lessee a right to withdraw support from the surface.

The rights and limitations which apply respectively to the ex-copyholder and the lord of the manor are believed, in the great majority of cases, to be precisely similar to those indicated. They may, however, be governed by special custom and vary within wide limits, or the copyholder's interest in the coal, if any, may not have been preserved in the enfranchisement of the land.

The ex-copyholder's legal interest, if any, in coal does not vest in the Commission, except in what are believed to be very rare cases where he enjoyed a right to work the coal without the licence of the lord of the manor([56]).

Presumably the reasons for the exclusion of such interests are that in many cases the mere ascertainment of whether they exist at all, and, if so, of the nature and extent of such interests, might have taken a long time and caused great expense to the Commission. It may be true that, strictly speaking, the precise interests of the lords of the manor should be ascertained before they can be valued,

([56]) Section 5 (6).

and that this cannot be done without determining the interests of the ex-copyholder. Possibly, however, the difficulty is academic rather than a practical one, and the exclusion of the one type of interest will, at least, eliminate a task that might seriously have hindered the work of the Regional Boards.

As a general rule, the ex-copyholder, unless he lost his rights on enfranchisement, will retain a right of support for his surface, and will be entitled to expect some consideration for parting with that right, if any, when the coal is worked. If the ex-copyholder, not being the legal owner of the coal, has already leased his rights to a colliery concern, his contractual relations with his lessee are not in any way disturbed by the Act.

PERSONS NOT LEGALLY INTERESTED IN COAL.

Where a right of support from coal does not exist on the vesting date in relation to any particular surface lands, it will not be legally possible for the Commission to sell coal for that purpose([57]). It would, however, appear to be lawful for them, subject to the rights of a mining lessee, to covenant not to permit coal to be worked([58]), and this would have the same practical effect.

Alternatively it would be lawful for the Railway and Canal Commission, if they thought fit, to grant a right of support after the vesting date as described on page 72 in relation to the interim period.

THE MINING LESSEE.

The mining lessee has the satisfaction that Part I. of the Act does not take away or affect any of the rights that he enjoys under his mining leases except that,—

(*a*) unless the Commission otherwise direct, he loses

([57]) Section 17 (3).
([58]) Section 17 (5).

his interest in any coal or mine of coal which he has sub-let([59]) ;

(*b*) he may not, after the valuation date, grant a fresh sub-lease of coal or a mine of coal except under a lease consolidation scheme or by way of mortgage([60]) ;

(*c*) notwithstanding any right to assign which may be conferred or implied by a lease, he may not, after the vesting date, assign his leasehold interest in a coal or a mine of coal without the consent of the Commission which may be withheld at their sole discretion and "without reason given"([61]).

His interests may, however, be indirectly prejudiced in other ways, viz.:—

(*a*) he may have to meet claims in respect of surface damage which he would have escaped if the coal had remained vested in his present lessor ;

(*b*) in exceptional cases his prospect of securing a renewal of his lease, at the expiration of the term, may be diminished.

As regards the first point, there is no doubt that many landowners have refrained from harassing their lessees with claims for surface damage, particularly if the damage has not been very serious. They have been influenced by the fact that they were getting a substantial revenue from royalties, and claims, even for serious damage, have not been pressed to the full extent. Moreover, in developing the surface for building purposes, they have generally had regard to the working of the coal, and, in many cases, have not permitted the erection of buildings until the coal supporting the site has been worked. After the vesting

([59]) Section 5 (2) (*a*).
([60]) Section 19 (1).
([61]) Section 19 (2).

date the surface-owner will have no pecuniary interest in the working of the coal. In the writer's experience the spirit of altruism exists amongst royalty-owners at least as commonly as amongst any other members of the community, and, in many cases, it is more highly developed. Nevertheless, it must be recognised that the majority of them feel, rightly or wrongly, that they are the victims of a " raw deal," and they have been encouraged to do so by distinguished politicians whose sympathy with land-owners is not easily aroused. Under the circumstances it will not be surprising if, after the vesting date, claims for surface damage become more frequent and are more firmly maintained, and if there is not quite the same degree of co-ordination between surface and underground development. These factors represent one of the major difficulties of the Act.

In spite of what has been said, there can be little doubt that, from the mining lessee's point of view, the potential advantages of Part I. of the Act outweigh the drawbacks to which reference has been made. Modern methods of mining have led to a degree of concentration of underground workings that was not contemplated when the leases were taken. The result, in many cases, is that, as regards some leaseholds, rents are being paid greatly in excess of the minimum rent, and, as regards others, there are no workings to set off against the minimum rent. The effect is considerably to increase the current total rent charge by comparison with what it would have been, if methods had not been changed and workings had been widespread. It seems reasonable to suppose the " unification " and the consolidation of leases will eventually overcome this difficulty, although it may be that such relief cannot be applied immediately.

Apart from the consolidation of leases, the Commission, under Section 25, are given wide powers to reduce rents. Relief can only be given out of the surplus revenue of the Commission after meeting loan charges, administrative

expenses, and after appropriating to reserve such a sum each year as may be prescribed by the Board of Trade. Moreover, until the "prescribed minimum reserve" has been provided, only one-half of the annual surplus can be applied to the reduction of rents. It must be remembered that, in addition to the compensation payable to the royalty-owners, the Commission have to bear the costs of registration, the remuneration and expenses of the Central and Regional Valuation Boards, the claimants' costs in connection with claims for compensation, administrative expenses, &c. The total expense of acquisition must, of necessity, be heavy. Indeed, as regards some of the items, members of this Institution may well hope that the cost is not less than it should be.

From what has been said it will be realised that, however efficient the machinery of acquisition may be, the Commission, on the vesting date, will be faced with a very considerable debt over and above the amount paid or to be paid for the "acquired premises." Mining lessees will, therefore, be unwise to expect substantial and widespread relief immediately after the vesting date. Nevertheless, there is a brighter side to the picture. The award of the Greene Tribunal means, in effect, that the net rents and royalties on coal and mines of coal, assuming that they will be maintained at the average for the seven years 1928 to 1934, have been discounted at $6\frac{2}{3}$ per cent. per annum. If the Coal Commission can borrow, at, say, $3\frac{3}{4}$ per cent., they should have an annual "profit" of about £2,000,000 a year, assuming, of course, that the output and royalties in fact remain at about the same level. How long it will be before the whole of the "surplus revenue" will be available for reduction of rents will depend mainly on three factors, viz., the output of the industry, the period within which the Commission intend to redeem the purchase price and the amount of the prescribed minimum reserve. At present these are unknown quantities, and it would be extremely rash to attempt to make a forecast. Nevertheless, the probable annual "profit" is so sub-

stantial that a very gloomy view does not seem to be warranted.

There is, however, another consideration that should not be overlooked. In spite of a great improvement in the technique of the coal-mining industry during recent years, the increase of cost due to the working of deeper and thinner seams has approximately balanced the saving achieved by greater efficiency. Attention is drawn to the Presidential Address recently delivered by Mr. George Raw, B.SC., M.INST.C.E., to the North of England Institute of Mining and Mechanical Engineers, in which he makes the following statement:—

> "If the mining industry is to maintain social progress commensurate with that of other industries, facing as it must do deteriorating underground conditions, an increase in production costs during the next 25 years of 20 per cent. or 30 per cent. must be anticipated, unless adequate cost-increase prevention measures can be found. Such an increase, representing probably 3s. or 4s. per ton on present monetary values, would automatically devolve upon the community as a whole and retard the raising of, if not actually depress, the nation's standard of living."

If Mr. Raw's prognosis is sound, and he speaks with authority, the need for relief will grow as time passes. It seems to follow that, in the earlier years of the Commission's administration, the question of redeeming the loan might have an added importance.

PART III.

ASCERTAINMENT OF COMPENSATION.

REGISTERED PARTICULARS.

The precise *locus* of each holding together with details of the rights annexed to the coal and mines of coal comprised in the holding will be defined by the particulars

registered in the Coal Holdings Register in accordance with the Coal (Registration of Ownership) Act, 1937.

NOTICE OF CLAIM OR COMPENSATION.

In order to obtain compensation the owner, having previously made an application for the registration of his holding, must serve on the Commission before 1st July, 1939, a "Notice of Claim for Compensation"([62]). This is little more than a notice of intention to make a claim. The notice must be in the form prescribed by the Board of Trade([63]) and must include a statement "of all the "circumstances of the holding relevant to the ascertain- "ment of the person entitled to the compensation." If the claimant is aware of any error or omission in the registered particulars, the notice of claim must be accompanied by another notice giving details of such error or omission.

"ESTIMATE OF VALUE"([64]).

The provisions relating to the "estimate" are as follows:—

(*a*) It must be in the appropriate form as prescribed by the Rules made by the Central Valuation Board.

(*b*) It must be accompanied by (i.) a certificate, signed by the person making the estimate, to the effect that it has been made on the basis prescribed by Section 7 (4) of the Act, and (ii.) in the case of a freehold or leasehold reversion by a copy of every account agreed between the lessor and

([62]) Third Schedule, par. 9 (1).

([63]) Statutory Rules and Orders, 1938, No. 1232.

([64]) Third Schedule, pars. 11 (1) and (2), and Statutory Rules and Orders now awaiting approval of Parliament.

the lessee showing rents and royalties due and payable under the lease during the two years preceding the valuation date.

(*c*) It must be delivered by the claimant to the Regional Valuation Board.

(*d*) It may be delivered at any time after a " notice of claim " has been served on the Commission, and it must be delivered within such period (not being less than one month) as the Regional Board may specify in a notice served by them on the claimant requiring delivery to be made.

Paragraph 11 (1) of the Third Schedule is a compliment to the mineral surveyor in that it implies his ability accurately to interpret Section 7 (4). No doubt the compliment is justified.

It is conceivable that the forms prescribed by the Central Valuation Board, and in which or on which the estimates of value are to be made, may be alleged to be unnecessarily complicated. In the writer's view that feeling will disappear as familiarity with the forms is acquired, and they should be found to be definitely helpful.

THE BASIS OF VALUATION.

The " person making the estimate," the Regional Valuation Board and the Referee, are all bound by Section 7 (4) of the Act, which prescribes what " the value of a hold- " ing shall be taken to be." The holding comprises—

(*a*) the coal and mines of coal, together with all interests therein other than " retained interests ";

(*b*) all property and rights, other than rights to withdraw support, that would pass with the coal and mine under a conveyance thereof.

It will be noticed that the " holding " does not include a

right to withdraw support from the surface, but, where such a right is to vest in the Commission the holding is to be valued " as if each of the existing owners thereof, having " power to grant that right . . . , had agreed so to grant it " in addition to any acquired rights in which the holding " subsisted "([65]).

It has been stated that the Act requires that the right to withdraw support shall be valued as a separate item([66]). Such an interpretation does not appear to be desirable or necessary, and, judging by the forms in which the estimate of value is to be made, it does not appear to have been adopted by the Central Valuation Board.

The conditions of the sale postulated by Section 7 (4) include the following:—

(*a*) The sale is to be effected on the valuation date.

(*b*) " Completion," which must be deemed to mean delivery and payment, is to be postponed to the vesting date.

It is clear from Section 8 that, subject to the exercise of such a measure of care as would be exercised " under the " ordinary practice of the management of mineral estates " by prudent owners in relation to property that is to con- " continue in their ownership," the claimant is to be entitled until the vesting date " to the possession and enjoy- " ment of the property . . . and to the benefit of the rents " and profits accruing up to that date."

Expressed briefly, the value to be ascertained in relation to a holding appears to be what that holding (and any right to withdraw support that goes with it) is likely to be worth on the vesting date, according to the prospects as they appear on the valuation date. That surely must be the price that would be fixed as between a willing buyer and a willing seller, in the open market, entering into a contract which embodied the conditions indicated.

([65]) Section 7 (4).

([66]) " The Coal Act, 1938," P. G. Roberts, p. 75.

The writer is aware that the foregoing interpretation is not universally accepted, and he appreciates that Section 7 (4) presents difficulties both as to interpretation and application. The alternative view appears to be that, in estimating the value, no regard should be had to the postponement of completion or to what that postponement involves. If that view is correct, the words " under a contract providing for " the completion thereof on the vesting date " do not appear to add to the meaning of Section 7 (4) anything that is relevant to the value of the holding.

Unfortunately neither interpretation seems likely to secure a really equitable result. If account be taken of the postponement of completion and of the claimant's right of enjoyment during the interim period, the value on the valuation date, of coal in a holding that was likely or, within the limits of mining forecasts, practically certain, to be worked during or before the vesting date, would be negligible. If, by reason of some mischance, to which all schemes of mining development are subject, the coal were not, in fact, worked, the unfortunate owner would get no royalty during the interim period and no compensation on the vesting date, although his coal remained untouched. It is, indeed, hard to imagine that a " willing " vendor " would be a party to a contract under which he would get his royalties, if his coal were worked in accordance with expectation, but nothing if it were not.

To ignore the postponement of completion would, however, lead to injustices which the writer feels to be much more serious. Let it be assumed that the unworked coal is divisible into two parcels or aggregations of parcels, and that A is the coal that will be worked during the " interim " period," and B the coal that will remain unworked on the " vesting date.' The sum of £66,450,000 determined by the Greene Tribunal may be deemed to be the estimated value of A + B as on the valuation date. It is generally agreed that the revenue from coal can be regarded as a perpetuity. There is no reason to suppose that the prospects as regards the size and security of the revenue will

be materially different on the vesting date from the prospects on the valuation date. The value of B on the vesting date may, therefore, be regarded as the same as the value of A+B on the valuation date. The value of A on the valuation date is approximately £10,550,000. The effect of ignoring the postponement of "completion" would be that, on the vesting date, the owners of B would get £10,550,000 less than the value of their property—on that date—in order that such a sum might be paid to the owners of A for coal which, in the main, did not then exist and for which those owners, or the great majority of them, had already received payment in full. It is true that many persons who own a part of B also own a part of A, but this is by no means universal, and the relative values differ within wide limits. At the best, such a basis of valuation would penalise the owners of holdings containing large resources and having long lives, for the benefit of those whose coal is likely to exhausted in the near or relatively near future.

THE "DRAFT VALUATION."

Paragraph 11 (3) of the Third Schedule requires that—

> "As soon as may be after notice of the registration of particulars in respect of a holding has been given to the Regional Valuation Board and an estimate of the value thereof has been delivered to them, they shall, after making such inquiries and inspections and taking such other steps as they think requisite, review the estimate and settle a draft of their valuation of the holding."

Having regard to the large number of holdings in the regions and to the importance of completing their work well before the vesting date, it is obvious that each Regional Board will be faced with an onerous and exacting task. One of the main difficulties is that the idea of market value in relation to coal holdings is little more than a convenient fiction. No two holdings are exactly alike,

and, even if they were sold by public auction every week, like tables and chairs, it would be wrong to assess the value of one by the price paid for another. In practice the Regional Boards may well find themselves compelled, in many cases, to estimate what a purchaser would be justified in paying rather than what, from their experience of " the open market," they consider he might be expected to be willing to pay.

The dissimilarity of holdings as regards life and revenue make it all the more necessary that they should be valued in accordance with some common principle. Having this in mind, the writer ventures to put forward the following suggestions as a means of checking the draft valuations:—

(*a*) That, in visualising the development of new colliery areas, involving the sinking of new pits, regard should be had to the probable life of and output from existing pits and to the probable output to be produced from the " region " as a whole.

(*b*) That an estimate should be made of the probable output of each existing colliery having regard to the probable output from the region.

(*c*) That the estimates of output, assumed for the purposes of a check valuation of the coal in each holding, should be consistent with the estimated output of the colliery to which such coal will be worked.

In making such a series of check valuations it would be proper, if the rents and royalties assumed were customary, to apply moderate rates of interest and, apart from exceptional cases, to apply uniform rates.

It is hardly necessary to point out that each claim must, in fact, be treated independently on its merits. It would seem proper, however, if a draft " draft valuation " differed very materially from a check valuation, made

on the lines indicated, that investigation should be made to ascertain if such a disparity was really warranted.

NOTICE BY CLAIMANT REQUIRING TO BE HEARD.

The notice must be given in the manner prescribed by the Coal (Valuation Procedure) Rules, 1938, and must be served on the Regional Board within 30 days of receiving notice from them of their draft valuation([67]).

The claimant may be heard " in person " or " by a " person experienced in the valuation of minerals or in the " management of mineral estates "([68]).

VALUATION " SETTLED " BY THE REGIONAL BOARD.

After having given the claimant an opportunity of " being heard," it is the duty of the Regional Board to " settle " the valuation of his holding and to give him a notice thereof([69]).

VALUATION APPEALS([70]).

Within 30 days of being served with a notice of the valuation " settled " by the Regional Board, the claimant may give notice, in the manner prescribed by the Coal (Valuation Procedure) Rules, claiming to have the valuation reviewed by a referee selected from a panel of referees appointed by the Board of Trade. The words used seem to imply that the selection, as well as the appointment, will be made by the Board of Trade.

([67]) Statutory Rules and Orders, 1938 (now awaiting approval by Parliament).

([68]) Third Schedule, par. 11 (4).

([69]) Third Schedule, par. 11 (5).

([70]) Third Schedule, par. 12.

The following provisions, *inter alia*, relate to the hearing of appeals:—

(*a*) The proceedings are to be held in public.

(*b*) The claimant may be heard either in person or by such representative as he may appoint.

(*c*) The claimant may call one (and unless the referee otherwise directs, not more than one) expert witness.

(*d*) The costs of the reference are to be borne by the Commission, unless it appears to the referee that the appeal was " frivolous or was not justified by a substantial error or omission in the valuation of the Regional Valuation Board," in which case the costs are to be borne as the referee directs.

The Regional Valuation Board are required to make such alteration, if any, of their valuation as the referee may direct.

COMPENSATION.

When a Regional Board have completed the valuation of all the holdings in their region, and all appeals have been determined, they are required to certify the " amounts " ascertained by those valuations " to the Commission([71]). Subject to certain safeguards against possible errors, it remains for the Commission, by a simple proportion sum, to calculate the amount of compensation payable in respect of the " principal coal hereditaments " in each holding. As regards " subsidiary coal hereditaments " the valuation and the compensation will be the same in amount([72]).

([71]) Section 7 (6) and Third Schedule, par. 16.

([72]) Section 7 (7)

Conclusion.

The writer apologises for the length of this paper. It has been written amidst many preoccupations, and it has not been possible to revise and condense it as he would have preferred to do.